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MAY - 6 1992

May 6, 1992

Federal Communications Commission
Office of the Secretary

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

MAY 7 1992
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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MAY - 6 1992

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In Re Application of:)

SHELLEE F. DAVIS)

File No. BPH-911231MA)

Application for Construction)

MAY 1 2 38 PM '92

Davis contends that she did nothing improper by asking the Commission staff to change the date on an amendment that she filed. However, Davis' glib explanation raises more questions than it answers. Why was the amendment initially stamped as received on March 10, 1992? Why did the staff release a public notice stating that the amendment was initially received on March 10, 1992? If a mistake was made, how was it done? Who made the mistake? What proof does Davis have that her amendment was filed on March 9, 1992? What member of the Commission staff authorized the change of the stamp date? What authorization did this staff person have? Was it approved by the supervisory staff? Does the Commission staff normally make such changes?

Until these questions are fully answered by Davis and by the Commission, a substantial and material question of fact is raised that Davis engaged in an improper ex parte contact in regard to a matter which relates the merits of this proceeding. Whether Davis' amendment was timely filed on March 9, 1992, could be decisively significant to the outcome of this proceeding.

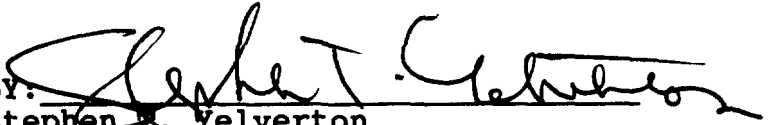
Under Section 1.1208 (b)(1), no person shall make an ex parte presentation in a proceeding that could become restricted, even though the proceeding is not restricted at the time, if that person intends to file a mutually exclusive application which would cause the proceeding to become restricted. There is no question that at the time of the contact, Davis intended to prosecute a mutually exclusive application which would make this proceeding become restricted.

Davis failed to address another potential ex parte issue. She admitted to speaking with the Commission staff as to how to file an application with a short-spaced tower site. Whether a tower site is short-spaced and what justification is presented is a matter of decisional significance in any comparative hearing. Davis can not rely on the Commission staff to be her legal counsel and engineering consultant in such matters.

WHEREFORE, in view of the foregoing, Davis' motion to strike should be denied. She failed to refute that she did not engage in any impermissible ex parte contacts in regard to her pending application.

Respectfully submitted,

MAUPIN TAYLOR ELLIS & ADAMS, P.C.

BY: 
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May 6, 1992
dml/sty2/sty28
12269.002

FM BROADCAST STATION APPLICATIONS AMENDMENT RECEIVED

OH BPH	-911230MF	NEW	WESTERVILLE RADIO PARTNERS
		103.9MHZ	WESTERVILLE , OH
OH BPH	-911231MA	NEW	SHELLEE F. DAVIS
		103.9MHZ	WESTERVILLE , OH
OH BPH	-911231MC	NEW	OHIO RADIO ASSOCIATES. INC.

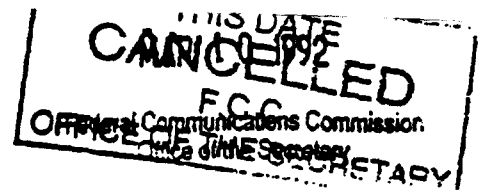
LEGAL AND ENGINEERING AMENDMENT (AMENDMENT # 920310ME)

LEGAL AMENDMENT (AMENDMENT # 920310MC)

LEGAL & ENGINEERING AMENDMENT (FILE NO. 920309MF)

MAR - 9 1992

Federal Communications Commission
Office of the Secretary



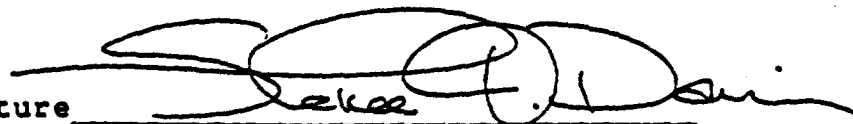
Attachment 2

AMENDMENT

Please amend the application of Shellee F. Davis to
include the following attached.

Signature

Date


March 7, 1992

CERTIFICATE OF SERVICE

I, Kate D. Shawcross, a secretary in the law offices of Maupin Taylor Ellis & Adams, P.C., do hereby certify that on this 6th day of May, 1992, I have caused to be hand delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Opposition to Motion to Strike" to the following:

Dennis Williams, Chief*
FM Branch
Room 332
Federal Communications Commission
Washington, D.C. 20554

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Counsel for Shellee F. Davis



Kate D. Shawcross

Hand Delivery*

dml/sty2/sty28